

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

JAMES P. KLAGES, JR.,

Plaintiff,

v.

CIVIL ACTION NO. 3:09-0840

RENAE STUBBLEFIELD, Administrator,
and RICK SMITH, Business Manager,

Defendants.

MEMORANDUM OPINION AND ORDER

This action was referred to the Honorable Cheryl A. Eifert, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). The Magistrate Judge has submitted findings of fact and recommended that Plaintiff's Complaint be dismissed with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii) and Plaintiff's application to proceed without prepayment of fees or costs be denied pursuant to 28 U.S.C. § 1915(e)(2)(B). Neither party has filed objections to the Magistrate Judge's findings and recommendation.

Accordingly, the Court accepts and incorporates herein the findings and recommendation of the Magistrate Judge and **ORDERS** that Plaintiff's Complaint be **DISMISSED** with prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B)(iii) and Plaintiff's application to proceed without prepayment of fees or costs be **DENIED** pursuant to 28 U.S.C. § 1915(e)(2)(B), consistent with the findings and recommendation.

The Court **DIRECTS** the Clerk to forward copies of this written opinion and order to all counsel of record, and any unrepresented parties.

ENTER: August 5, 2011

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', written over a horizontal line.

ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE